
OLR Bill Analysis

SB 259

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

SUMMARY:

This bill reduces the scope of laws enhancing the penalties for illegal drug activities near schools, licensed day care centers, and public housing projects (i.e., drug-free zones). It reduces the size of these zones from 1,500 to 200 feet and specifies that they are measured from the perimeter of the property.

The bill also provides that for the enhanced penalty to apply for some of these crimes, the offender must commit the crime with the intent to do so in a specific location which the trier of fact (i.e., the jury or judge) determines is within such a zone. This applies to violations involving drug paraphernalia or illegal drug sales and related crimes (such as possession with intent to sell), but not to illegal possession. To the extent this provision applies to illegal drug sales and related crimes, it codifies case law (see BACKGROUND).

Currently, drug-free zone laws generally require a mandatory sentence, in addition and consecutive to any prison term imposed for the underlying crime, as follows:

1. one year for various drug paraphernalia crimes within 1,500 feet of property comprising a public or private elementary or secondary school when the defendant is not enrolled as a student there;
2. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) public or private elementary or

secondary school when the defendant is not enrolled as a student there or (b) licensed child day care center identified by a conspicuous sign; or

3. three years for selling illegal drugs, transporting or possessing them with intent to sell, or related crimes within 1,500 feet of property comprising a (a) public or private elementary or secondary school, (b) licensed child day care center identified by a conspicuous sign, or (c) public housing project.

EFFECTIVE DATE: October 1, 2014

BACKGROUND

Exceptions to Enhanced Penalties; Departing From a Mandatory Minimum

The enhanced penalties described above do not apply to (1) drug paraphernalia-related actions involving less than one-half ounce of marijuana or (2) possessing less than one-half ounce of marijuana. PA 11-71 removed the criminal penalties for such actions and generally made them punishable by fines only.

Also, judges can impose less than the law's mandatory minimum sentence under the laws described above when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not threaten to use or suggest that he or she had a firearm, other deadly weapon, or other instrument that could cause death or serious injury. Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Enhanced Penalties for Drug Sales to Minors or Hiring Minors to Sell Drugs

By law, if a nonaddicted adult is convicted of selling or giving illegal drugs to a minor at least two years younger, there is a mandatory two-year prison term in addition and consecutive to any prison term imposed for the underlying crime (CGS § 21a-278a(a)).

If someone is convicted of hiring or persuading a minor to sell illegal drugs or to commit related crimes, there is a mandatory three-year prison term in addition and consecutive to any prison term imposed for the underlying crime (CGS § 21a-278a(c)).

Related Cases

In a series of cases, the Connecticut Supreme Court has interpreted the statute setting enhanced penalties for drug sales and related crimes in drug-free zones as requiring the state to prove that the defendant intended to sell drugs at a specific location, which location is within such a zone. The state does not have to prove that the defendant knew that the location was within such a zone (see *State v. Denby*, 235 Conn. 477 (1995); *State v. Hedge*, 297 Conn. 621 (2010); *State v. Lewis*, 303 Conn. 760 (2012)).

For example, in *Lewis*, the defendant was charged with four drug crimes, including possession of narcotics with intent to sell within 1,500 feet of a school. The court upheld the Appellate Court's determination that there was insufficient evidence that the defendant intended to sell drugs at the place where he was arrested.

The defendant was arrested a block from his home, with a large amount of drugs and cash on his person. He was stopped by police because he resembled a suspect in another crime, not because the police suspected an impending drug sale. The court concluded that while the evidence was sufficient to support the jury's verdict that the defendant intended to sell drugs, it was insufficient to establish that he intended to sell drugs where he was arrested (a location within a drug-free school zone).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 21 Nay 19 (04/02/2014)